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VIA ELECTRONIC SUBMISSION

Office of Management and Budget
Office of Information and Regulatory Affairs
Attention: CMS Desk Officer
OIRA_submission@omb.eop.gov

RE: CMS-10368 (OCN 0938-NEW)
Dental Action Plan Template for Medicaid and CHIP Programs

Dear Sir/Madam:

The National Health Law Program (NHeLP) and the Children's Dental Health Project (CDHP) appreciate the opportunity to provide comments on the proposed Dental Action Plan Template published December 23, 2011. NHeLP is a public interest law firm working to advance access to quality health care and protect the legal rights of lower-income and underserved people. NHeLP works with state and local advocates, providers, and clients to improve the health care safety net. CDHP is a national non-profit organization with the vision of achieving equity in oral health to allow all children to reach their full potential. As a consumer organization, CDHP works diligently to improve access to and affordability of high quality oral health services for children, particularly the most vulnerable children in this country. While we support the attention given to the oral health of children enrolled in Medicaid and CHIP, we are concerned with several provisions of the proposed Template and provide the following comments. We appreciate your consideration.

Medicaid and CHIP Dental Health Goals

We are concerned with the blanket goals that the Template adopts (increasing the proportion of children ages 1-20 enrolled in Medicaid or CHIP who received any preventive dental services by 10 percentage points over a five-year period and the proportion of children ages 6-9 enrolled in Medicaid or CHIP who receive a dental sealant on a permanent molar tooth by 10 percentage points over a five-year period). We understand these to be CMS's national goals.

However, we believe that such a one-size-fits-all approach is not appropriate in the state context given the tremendous variations among states in the current proportion of children currently accessing these services. We are also concerned that the goals, as written, may induce

unintended consequences to incentivize excessive and clinically unnecessary "preventive" treatment, which can siphon resources away from the reparative treatment necessary to relieve a child from pain or to restore function in order to eat, sleep, learn, or smile. Guidelines by dental professional organizations promote matching children's level of risk to the intensity of preventive and reparative treatment. However, all state Medicaid EPSDT benefits call for two preventive treatments a year through their periodicity schedule which is inadequate for high-risk children and potentially excessive and wasteful of resources for low-risk children.

On January 18, 2001, CMS (then HCFA) released a Dear State Medicaid Director letter (SMDL #01-101) that informed states of pending reviews of compliance with dental access requirements. In preparation for those reviews, states were required to prepare an Action Plan for Improving Access to Oral Health Services. The Plan was to report comprehensively on barriers to access and strategies to resolve those barriers for Medicaid enrolled children. The 2001 SMD letter is similar in scope to the current Template and may provide a foundation on which to build upon information and minimize the burden on states.

We understand that CMS's intent is to give states flexibility in designing their own Action Plans. However, we believe the 2001 guidance provides a more detailed and comprehensive review of barriers to preventive *and* treatment services and more thoroughly identifies strategies that have been previously attempted to alleviate the gaps in access. In addition, using all or some portion of the 2001 Plan of Action may both reduce the burden on the states and improve the usefulness of the proposed data collection to CMS, state agencies, providers and enrollees. While the 2001 Plans do not require specific attention to preventive services or sealants, the sum of the information collected in the four categories (outreach and administrative case management for children; adequacy of Medicaid reimbursement rates; increasing provider participation; and claims reporting and processing) provides the information needed to assess trends since 2001.

RECOMMENDATION: We recommend amending the Medicaid and CHIP Dental Health Goals to take into account variation between states and the access to care beyond preventive services. Specifically, we recommend that CMS designate states into one of three categories: high, medium or low performing, and provide more modest goals for those states that are deemed high performing and more aggressive goals for low performing states so that they can be brought closer to the levels recommended by expert groups. We also recommend that the goals comport with recommendations by the American Academy of Pediatric Dentistry specific to sealant placement.[1]

We further recommend the current Template adopt the four categories outlined in the 2001 guidance for Action Plans for Improving Access to Oral Health Services, including specifying

[1] American Academy of Pediatrics. Guideline on Periodicity of Examination, Preventive Dental Services, Anticipatory Guidance/Counseling, and Oral Treatment for Infants, Children, and Adolescents. Revised 2009. Accessed 1/22/11 at: http://www.aapd.org/media/Policies_Guidelines/G_Periodicity.pdf.

data collection periods for the information. We recommend that CMS require states to include a copy of their 2001 template with their completed 2012 Template and explain how rates of the reported services have changed in that time period.

We also provide the following recommendations for modifying the proposed Template.

Instructions & Next Steps

We agree that as a paperwork reduction measure states should be permitted to submit a combined dental action plan that addresses both the Medicaid and CHIP populations. However, we believe that states should be required to clearly state any variations between the programs. We also recommend that CMS commit to quickly posting the Dental Action Plans to its website and require states to update them on a yearly basis.

RECOMMENDATION: We recommend that this section be rewritten as follows:

2) If you are undertaking State-wide oral health improvement activities that impact both programs, you may submit one combined dental action plan. ***However, this combined plan must clearly state how the activities affect enrollees in each program.*** Separate dental action plans should be submitted in States that are addressing oral health improvement activities separately in their Medicaid and separate CHIP programs.

…

5) After reviewing and compiling this information, CMS ~~plans to~~ ***will*** post this information on the CMS website.

…

6) CMS Regional Office staff will follow up with States on a ~~regular~~ ***yearly*** basis to track the progress of the State Action Plans and achievement towards the goal(s). ***States are expected to keep track of progress towards the Dental Health Goals and provide yearly updates to CMS on movement towards those goals.***

Oral Health Programs (Background)

We are concerned that the instructions, as written, would permit states to report information on Medicaid OR CHIP, instead of requiring that states report on both programs. We are also concerned that the instructions do not require states to report any discrepancies between recipient utilization and provider participation between the two programs or between delivery systems. Finally, we believe that the "you" in "you know" is confusing and unnecessary.

RECOMMENDATION: We recommend that this section be rewritten as follows:

Provide information on your current oral health program for children under Medicaid and~~/or~~ CHIP. ***Where discrepancies exist in recipient utilization and provider participation rates between Medicaid and CHIP, highlight those discrepancies and any steps being taken to remedy them.*** Include information about your State's current delivery system(s) (e.g., fee-for-service, managed care, administrative service organization, etc.). If your State has changed delivery systems in recent years, explain the reason for the change and the impact on access to dental services. Also include information on provider participation rates (including dental specialists and other providers, such as physicians, dental hygienists and other ~~newer model~~ mid-level practitioners) and issues with access to oral health services in underserved areas. "Underserved areas" would include areas of your State that ~~you know~~ are rural, frontier or where it is difficult to recruit providers as well as designated Dental Health Professional Shortage Areas (DHPSAs).

- Access Issues/Barriers to Oral Health Services (please provide information on issues/barriers ~~that you are aware of~~ that impede access to providing oral health services to children through Medicaid ~~or~~ ***and*** CHIP in your State generally, as well as in underserved areas, and any steps you have taken to address those issues or barriers):

- Current Dental Delivery System (e.g., fee for service, managed care, use of administrative service organization or combination dental programs). If you have a combination dental delivery system, provide the number of children served by each system:

- Provider (Dentist) Participation Rates (For the most recent ***three*** year***s of*** data ***that*** is available ***(please specify)***, include the number of dentists licensed in your State, the number of Medicaid and~~/or~~ CHIP participating dentists (any claims filed), and number of active dentists (billing $10,000 or more in a year). Please specify the time period the data represents as well as the specialty of the dentist***, and break out the data by program***):

- Non-Dentist Provider Participation Rates**:** (Describe the participation of other providers, e.g., pediatricians, dental mid-level providers, dental hygienists, in your State to improve access to dental services for children. In addition, for the most recent ***three*** year***s of*** data ***that*** is available (please specify), please provide the number of Medicaid and~~/or~~ CHIP non-dentist providers, by provider type, participating in your Medicaid and~~/or~~ CHIP programs. "Participating" is defined the same as for dentists (any claim filed).)

- Additional information about program (please provide any additional information that is relevant or that you would like to share about your dental program):

Activities to Achieve Goal

While we understand that the proposed list is not exclusive, since it is extensive we recommend adding several other activities.

RECOMMENDATION: We recommend that the section be amended to include:

- Education/outreach to schools
- Coordination with other health entities such as public health departments and rural health clinics
- Coordination with Head Start, WIC and related programs

Additional Background

As with other sections, we are concerned that this section could be read to permit states to provide information for Medicaid OR CHIP programs, instead of providing data for both programs, where applicable.

RECOMMENDATION: We recommend that this section be rewritten as follows:

Provide additional information on your current oral health program for children under Medicaid and~~/or~~ CHIP.

…

Dental Data Measurement

We believe that the final sentence in this section (regarding what data is required to be reported) is confusing.

RECOMMENDATION: We recommend that the final sentence of this section **(**(NOTE: You are not required to report this data on the Template.)) be modified to make clear what data are not required to be reported.

Reimbursement Strategies

We are concerned that the services outlined in the Template do not reflect a representative sample of typical pediatric dental services and fail to address reimbursement for common treatment procedures covered in Medicaid. Additionally, we are concerned that this section does not adequately capture children who are served through some managed care programs. We are

also concerned that the question does not require states to break out reimbursement rates between the Medicaid and CHIP programs.

RECOMMENDATION: We recommend that this section be modified as follows:

What are your current reimbursement rates for the following ~~10~~ procedures for services provided to children eligible for Medicaid and CHIP? ***Where the rates for the two programs are different, specify the rate for each program.***

Diagnostic: D0120 Periodic Oral Exam
~~D0140 Limited Oral Evaluation, problem focused~~
D0150 Comprehensive Oral Exam
~~D0210 Complete X-rays with Bitewings~~
D0272 Bitewing X-rays – 2 films
~~D0330 Panoramic X-ray film~~

Preventive: D1120 Prophylaxis (cleaning)
D1203 Topical Fluoride (excluding cleaning)
D1206 Topical Fluoride Varnish
D1351 Dental Sealant

Treatment: ***D2930 Stainless Steel Crowns***
D3220 Pulpotomy
D7140 Extractions
D2391 Filling (One surface)

RECOMMENDATION: We further recommend that this section be amended to add the following questions:

If you are using managed care delivery system, are payments to dentists capitated or are dentists paid on a fee-for-service basis? If you are using a managed care delivery system, describe how you monitor dental panels and payments to assure that an adequate number of dentists are participating and accepting new patients. If you are using managed care, please describe the extent of overlap in dental panels, that is are panels from one plan to another heavily overlapping or do different dentists participate in each plan?

Please describe any payment incentive programs used by the state and managed care organizations in the last five years.

Efforts Related to Dental Sealants

We recommend that the data requested in this section cover the period of the previous three years, as opposed to the previous year.

RECOMMENDATION: We recommend that this section be modified as follows:

Do you encourage or plan to encourage dental providers in your State to provide dental sealants? If so, how do you communicate that information? Have you seen an increase in the number of children receiving sealants ***in the past three years***? Does your State support active school-based or school-linked dental sealant programs? If yes, how many Medicaid- ~~or~~ ***and*** CHIP-enrolled children were served by these programs in the past ~~year~~ ***three years***? How many sealants were placed in these programs in the past ~~year~~ ***three years***? Are you continuing to see increases in the number of children served by these programs? Has funding from the Centers for Disease Control and Prevention [for oral health infrastructure development] contributed to these efforts? Please describe.

Collaboration with Dental Schools

As with other sections, we are concerned that this section does not clearly require states to report data on both Medicaid and CHIP beneficiaries.
RECOMMENDATION: We recommend that this section be modified as follows:

Do you have a dental school or dental hygiene school in your State? If yes, do you have any arrangement with the dental school or dental hygiene school to treat Medicaid ***and CHIP*** beneficiaries, serve in rural areas, provide educational opportunities, etc.? Please describe.

Electronic Dental Records

We recommend that this section include data from non-dental providers that may provide dental services.

RECOMMENDATION: We recommend that this section be modified as follows:

Describe the use of electronic dental records in your State for your Medicaid and CHIP population. What is the take up rate by dental providers? ***What is the take up rate for other providers?*** Is the dental record integrated with the medical record? ~~?~~ Will the State support dental provider efforts to qualify for meaningful use incentive payments? ***If so, please describe.***

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Conclusion

In sum, while we are encouraged that CMS will be collecting data that can be used to track movement towards dental goals, we believe that a number of improvements can be made. If you have questions about these comments, please contact Jane Perkins, NHeLP, at (919) 968-6308 or perkins@healthlaw.org or Meg Booth, CHDP, at (202) 833.8288 x206 or megbooth@cdhp.org. Thank you for consideration.

Sincerely,

Emily Spitzer
Executive Director
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Catherine Dunham, Ed.D.
Executive Director
Children's Dental Health Project